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**MONTANA STATE
GRAZING DISTRICTS
HANDBOOK**

5TH REVISED EDITION



**MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION**

**CONSERVATION DISTRICTS DIVISION
HELENA, MONTANA**

1983

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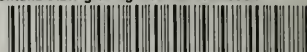
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PREFACE

The Department of Natural Resources and Conservation wishes to thank the Montana Association of State Grazing Districts and the many permittees, directors, and agencies who have made this fifth revision of the Montana State Grazing District Handbook possible. Without the cooperation and efforts of these interested people the successful operation of our state grazing district program would hardly be possible.

A grazing district often has to solve problems in perfecting its organization, but in the future, districts probably will be more concerned with maintaining control of their lands, and encouraging sound range management practices among their members. We hope this 5th revised edition of the Handbook will be even more helpful than the previous editions were. This book should be kept handy and used in making decisions for the district.

Good range management depends increasingly on maintaining adequate records, and making sound decisions based on established regulations. The rules and guidelines in this Handbook will help grazing districts to administer their areas justly.

The group tenure idea has merit—it brings local control to grazing problems. However, unless the members of the districts keep informed and participate in the operation of the district, it will not function properly.

Department of Natural Resources and Conservation

Leo Berry, Director

Bob Robinson, Deputy Director

Ray Beck, Administrator, Conservation Districts Division

Jack G. Thomas, Rangeland Coordinator,
Conservation Districts Division

INDEX

	Page
Question and Answer Section	1
Bylaws	9
Grass Conservation Act	19
State and Federal Agreements.....	43
Cooperative Agreement	49

QUESTION AND ANSWER SECTION

1. Q. What is a cooperative state grazing district?

A. It is a nonprofit, cooperative association of livestock operators organized under a Montana statute that gives them the power to lease or purchase grazing lands, to develop and manage district-controlled lands and to allocate grazing preferences among members and nonmembers.

2. Q. How is a district formed?

A. Three or more persons who own or control commensurate property (see 12) and are livestock operators within an area may file a written request to the Department of Natural Resources and Conservation. This request must be accompanied by a plat showing the proposed boundaries of the area. See Sec. 76-16-201, MCA. The Department can also furnish additional information and advice.

3. Q. What is the general purpose of a district?

A. To provide for the conservation, protection, restoration, and proper utilization of grass, forage and range resources of the State of Montana. To provide a means for cooperation with governmental agencies that have jurisdiction over federally owned lands. To permit the establishment of a grazing administration which will aid in the unification or control of all grazing land within the state where the ownership is diverse and the lands intermingled. To provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties. See Sec. 76-16-102, MCA.

4. Q. May a district own land?

A. Yes. State districts are empowered by law "to acquire forage producing lands by lease, purchase, cooperative agreements, or otherwise . . ." Lands owned by a state district are still subject to taxation the same as if owned by an individual. See Sec. 76-16-305, MCA.

5. Q. May a district borrow money?

A. Yes, and if necessary, the physical assets of the district may be mortgaged to provide for operation and development, provided that at least 80% of the permittee members give written consent to such borrowing, and such borrowing is approved by the Montana Department of Natural Resources and Conservation. See Sec. 76-16-323(3), MCA.

6. Q. What is an assessment?

A. An assessment is levied for a particular purpose and can only be levied with the written consent of 80% of the permittee members. It must be levied on an animal unit basis and is usually used to buy lands, or acquire them to construct improvements. See Art. VII Sec. 5 Std. Bylaws and 76-16-103(2), MCA.

7. Q. What are grazing fees?

A. Grazing fees are an annual charge based upon the number of animal units permitted and are used in paying leases, rentals, operating expenses, and state fees. See Sec. 3 Art. VII Std. Bylaws.

8. Q. Are the district's records open for inspection by the membership?

A. Yes. The Secretary-treasurer must allow members to inspect the books during any reasonable hours. See Sec. 3F Art. VI Std. Bylaws.

9. Q. Are the grazing district's financial affairs audited frequently?

A. Yes. The districts are required by law to have an audit made of their books at the close of the fiscal year by a person approved by the Department. A copy of the audit is submitted to the Department. See Sec. 76-16-105, MCA, also Sec. 5 Art. V Std. Bylaws.

10. Q. What is a grazing preference?

A. The law defines a preference as a right to obtain a grazing permit from a state district. This right is stated in terms of animal units. Preferences are attached to commensurate property (see 12) and once they are established they do not change from year to year. Preference-holding members have the voting privilege in a state grazing district. See Secs. 76-16-103, 302, 405, MCA.

11. Q. How are preferences established?

A. When a district is organized, preferences are given first to members owning or controlling dependent commensurate property (see 12); if there is grazing capacity left over, members owning or controlling commensurate property shall have preference. See Sec. 76-16-401, MCA.

12. Q. What is "commensurate property" and "dependent commensurate property?"

A. (a) Commensurate property means property that is privately owned or

controlled and is not the same land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(b) Dependent commensurate property is property that requires the use of range in connection with it to maintain its proper use. It produces, or its owner customarily furnishes, the proper feed necessary to maintain livestock during time other than the established grazing period on the range. It must have been used in connection with the range for any three years or any two consecutive years in the five-year period immediately preceding June 28, 1934. In the case of districts organized after March 15, 1945, the land must have been used for a five-year period immediately preceding the date of organization of such districts. See Sec. 76-16-103, MCA.

13. Q. When are preferences distributed?

A. Within one year after the formation of a state grazing district. If a livestock operator fails to make application for a preference within one year after the district is formed he cannot qualify for a preference. However, if there is excess grazing capacity, a nonmember might be given a temporary permit. If he uses a temporary permit for any four years out of a five-year period in connection with commensurate property, the district may grant him membership and a preference in the district. See Sec. 76-16-401, 402, 403, 404, MCA.

14. Q. Are there any other methods by which preferences in state districts may be established?

A. Yes, by certification by the Bureau of Land Management to the extent that federal lands are involved. (See the cooperative agreement in the back of this booklet.)

15. Q. Is a member who holds a preference in the district required to obtain a grazing permit each year?

A. Either an annual or a term permit must be held as evidence of grazing privileges granted by the district. Normally permits are issued annually due to fluctuations in the operator's livestock numbers; however, a term permit could be issued for a longer period at the discretion of the district. See Sec. 76-16-310, MCA.

16. Q. Does a livestock operator need a permit if he is allotted a certain area in the district for his own use?

A. Yes. The district does not lease the land to the permittee; it only sells

him the right to graze the land each year. See Sec. 76-16-310, MCA.

17. Q. Does a livestock operator need a permit to graze livestock on his own privately controlled lands within the boundaries of a state grazing district?

A. Yes; so long as such livestock has access to other lands owned or controlled by the district or its members.

18. Q. Does the district have the power to control the number of livestock grazed?

A. Yes. Although preferences do not change, the number of livestock to be run may vary from year to year due to changes in carrying capacity of the range. Permittees who run livestock in excess of their permits are declared by the law to be in trespass. See paragraph 1, 76-16-306, MCA.

19. Q. Must a preference holder use his range each year?

A. No. The bylaws of state grazing districts allow the member to obtain a nonuse permit for as many as three years in succession upon payment of 10% of that year's grazing fee to allow the district to make use of that range. If a member holding an individual allotment wishes to reduce his stocking rate to rest the range, he will, of course, have to pay the full fee on the carrying capacity as determined by the district. See Sec. 1 Art. XIII Std. Bylaws.

20. Q. What happens to a preference when control of commensurate property changes hands?

A. Preferences are attached to commensurate property and when control of commensurate property changes hands, the preference changes with the land, providing the new owner or lessee secures a nonuse permit or pays the regular fees. Any preference may be revoked if the member fails to pay fees or assessments or refuses to abide by the rules and regulations laid down by the district. See Sec. 76-16-409, MCA.

21. Q. May a preference be transferred from one base property to another?

A. Yes, upon application and after a hearing held before the Board of Directors and approval of the Department. There must be sufficient commensurability and the applicant must own or control both properties. See Sec. 76-16-406, MCA.

22. Q. Is the real mortgage holder or owner protected in case a leased or

mortgaged base property is threatened with loss of preference through permittee's failure to pay fees or abide by regulations?

A. Yes. Sec. 1 of Article XII of the district's bylaws provides that in such cases the real mortgage holder or owner be notified and given 60 days in which to comply. He must have filed a statement with the board of directors indicating the commensurate land he has an interest in. See Sec. 76-16-412, MCA.

23. Q. What happens when a member buys or rents land formerly controlled by a state grazing district?

A. The established grazing capacity of the land acquired by the member is treated as self-furnished range and deducted from the amount of grazing furnished him by the district.

24. Q. What happens when a member or nonmember buys or leases land within the boundaries of a state district not controlled by the district?

A. In such cases the person acquiring ownership or control of such land shall have the right to obtain from the district a grazing permit determined by the carrying capacity of the land. In the case of a member, this shall be in addition to his preference. See Sec. 76-16-411, MCA.

25. Q. Does a grazing district member have any recourse if he feels that action taken by the board of directors of his district does not conform to the bylaws or the Grass Conservation Act?

A. Yes. Decisions of any state grazing district may be appealed to the Board of Natural Resources and Conservation. An appeal from the decision of the Board may be taken to the District Court where a portion of the land within the grazing district lies. The initial procedure is to get a decision from the Board of Directors of the grazing district, on which to appeal. See Sec. 76-16-109, MCA.

26. Q. What is the role of the Department of Natural Resources and Conservation?

A. The Department, through the Conservation District Division, will assist in carrying out the purposes of Chapter 16. It will act in an advisory capacity with the Department of State Lands and the boards of county commissioners, and supervise and coordinate the formation and operation of districts that may be incorporated. See Sec. 76-16-104, MCA. The powers of the Department are outlined in Sec. 76-16-105, MCA.

27. Q. How do I contact the office of the Conservation Districts Division of the Department of Natural Resources and Conservation?
- A. Address all correspondence to the Conservation Districts Division, Department of Natural Resources and Conservation, Capitol Station, Helena, MT 59620.
28. Q. May a district change its boundaries?
- A. Yes, with the consent of a majority of the members in the affected area and the approval of the Board of Natural Resources and Conservation after a hearing before the Department. Whenever the boundaries of a state district are changed, a plat indicating such change must be filed with the County Clerk(s) and also with the Department. See Sec. 76-16-207-209, MCA.
29. Q. Can a state district's bylaws be amended?
- A. Yes, they may be amended in any regular annual meeting or special meeting called for the purpose by a 2/3 vote of the permittee members present. No such amendment shall be effective until approved by the Department. See Sec. 1, Art IX Std. Bylaws and Sec. 76-16-208, MCA.
30. Q. Who may vote at district meetings?
- A. (a) Only permittee members shall be entitled to vote on issues submitted to a vote of the membership. All members who had preferential grazing permits during the preceding grazing season or who own such a permit at the time of voting shall be designated as permittee members.
- (b) An agent may become a permittee member for any person, association, partnership, or corporation in place of his principal. The agent's qualifications, obligations, and privileges shall be the same as those his principal would have had if he had elected to become a member.
- (c) No agent and his principal shall both be members of the district unless the agent has individual qualifications separate from those of his principal.
- (d) No member shall have more than one vote.
- (e) Voting by proxy shall not be permitted. See Sec. 76-16-302, 303, MCA.
31. Q. What does it cost to become a member of a district?
- A. The membership fee in any state grazing district may not in any case exceed five dollars. See Sec. 76-16-204(C), MCA; also see following question.

32. Q. Does a permittee member receive a share of the surplus assets of a district?

A. Whenever a state district possesses reserves and physical assets of greater value than its liabilities, and a permittee member loses his grazing preference, he is entitled to receive his share of the value of such excess from that district. This value shall be determined by the annual accounting of the state district.

Whenever a new member receives a grazing preference, he shall, as a condition of receiving such preference, pay the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. See Sec. 76-16-414, MCA.

33. Q. Does a grazing district prevent new operators from getting started?

A. No. New operators are entitled to the same preference as the former operator. However, any operator acquiring property not classed as dependent commensurate or commensurate property would not be entitled to a preference in the district. Sec. 76-16-409, MCA.

34. Q. May a state district impound animals found in trespass and hold them for damages?

A. Yes. The Grass Conservation Act provides that within 72 hours after impounding such animals, the owner or person in charge of that livestock be notified by registered mail of the location and number of livestock held, and the damages claimed to date, after which he is given 10 days to pay the damages claimed and take the livestock away. At the end of 10 days the unclaimed animals are turned over to the sheriff for sale at public auction.

Note: For a more detailed account of trespass procedure see Section 76-16-311, 312, 313, MCA.

35. Q. Can a member of a district be found in trespass?

A. Yes. No one is allowed to run livestock within the boundaries of the district without first obtaining a permit. If a member runs livestock within the district in excess of his permit or without a permit he would be subject to trespass. See Sec. 76-16-310, MCA.

36. Q. May an individual member of the district impound animals and recover trespass damages?

A. No, not unless he is acting as an agent of the district with express permission of the board of directors. Section 76-16-311, 312, 313, MCA

gives the state district or its duly authorized agent the sole right to impound animals and recover damages.

37. Q. Are there any other penalties for trespass within state districts?

A. Yes. (a) The owner or person in control of trespassing livestock shall be guilty of a misdemeanor and upon conviction shall be assessed a fine of not less than \$10.00 nor more than \$500.00 and in addition shall be liable for damages resulting from the trespass.

(b) In cases where federal lands are administered by the districts, the federal government reserves the right to protect its lands from trespass by appropriate civil action.

(c) It is also possible for districts to bring civil action against trespassers and obtain restraining orders.

(d) Most districts have enacted provisions in their bylaws providing for a penalty of not less than \$1.00 per animal unit in trespass for the first offense and not less than \$5.00 per animal unit in trespass for the second offense.

BYLAWS

The following is a standard set of bylaws originally adopted by all state grazing districts when organized. Since that time some of the districts have amended theirs in various ways. However such amendments have generally pertained to fees and methods of voting, so the general contents largely remain unchanged.

ARTICLE I

QUALIFICATIONS FOR MEMBERSHIP; FEES; VOTING

SECTION 1. **Membership:**

(a) Membership in the District is limited to persons, partnerships, corporations and associations engaged in the livestock business who own or lease forage producing lands within or near the district except that the agent of any persons, associations, partnerships or corporations entitled to membership in the district, may become a member in place of his principal. If any agent becomes a member his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. No agent and his principal shall both be members of the district unless such agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only shall be entitled to vote on all issues submitted to a vote of the members. No such member shall have more than one vote. Voting by proxy shall not be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

When any member shall dispose of a part of the lands or leases owned by him so that another shall become the owner of such lands or leases and acquire right to membership, then the rights and interests involved shall be determined by the Directors of the State District with the approval of the Department.

(b) **Membership Fees:** Any applicant qualified for membership under paragraph (2) or Article I of these Bylaws may become a member by filing an application with the Secretary-Treasurer of the District and by paying a membership fee of five dollars (\$5.00). No refunds of membership fees may be made except to applicants not qualified for membership.

(c) **Certificate of Membership:** This District, by its Board of Directors, shall issue a certificate of membership to each member. Such certificate shall be merely prima facie evidence of the membership of the member to whom it was issued and shall not be transferable. Each certificate of membership shall con-

tain a provision stating that it is not transferable.

(d) **Voting at First Organization Meeting:** All persons qualified for membership as outlined above in subsections (a), (b) and (c) of Article I, shall be entitled to vote only at the first organization meeting of the District. Meetings held for reorganization to comply with the Montana Grass Conservation Act shall not be considered a **First Organization Meeting**.

ARTICLE II

MEETINGS

SECTION 1. Annual and Special Meetings: Annual meetings of this District, shall be held at _____, in _____ Montana, on the _____ day of _____ of each year. Special meetings shall be held at such times and places as may be designated by the President or a majority of the Board of Directors. Written notices of all meetings of the District shall be sent to the last known address of each member by mail by the Secretary-Treasurer at least fourteen (14) days before the date of such meeting. Notices covering special meetings shall state the purpose for which said meeting is called. No business shall be transacted at a special meeting except as stated in the notice calling the same unless all members in good standing present at the meeting give their unanimous consent thereto in writing. In case of emergencies, special meetings may be called upon less notice by notifying each member in good standing in person or by telephone.

SECTION 2. Quorum: No vote of the members shall be taken at any meetings unless a quorum of the members entitled to vote upon the issue is present. A quorum shall consist of _____ members who are in good standing at the time of the meeting.

ARTICLE III

ELECTION OF DIRECTORS

SECTION 1. Election. The Board of Directors shall consist of five permittee members of the District. For the purpose of electing a Board of Directors the permittee members shall be divided into five classes, which classes shall be determined by dividing the total number of preferences in the District by the number of Directors to be elected, then commencing with the permittee member holding the smallest number of preferences, the permittee members shall be grouped into the first class by adding to the smallest, the next smallest and, by proceeding in this manner, fill the first class which first class shall consist of approximately twenty percent (20%) of the preferences. Repeating this group-

ing by taking the next remaining permittee member with the smallest preference and adding to that the next smallest remaining until the second class is filled, which second class shall consist of approximately twenty percent (20%) of the preferences and by repeating this grouping until each of the five classes are filled, then each class shall elect from the permittee members of the district its choice of one Director.

SECTION 2. Term of Office: Vacancies: The Directors so elected shall immediately after being so chosen, determine by lot which shall serve for one, two, three, four and five year terms and thereafter the Directors shall be elected for five year terms. A vacancy on the Board from whatever cause shall be filled from the class in which the vacancy occurred by the balance of the Board of Directors to serve until the next annual election at which time an election shall be held in the regular manner to fill the vacancy for the unexpired remainder of the term.

SECTION 3. Quorum: Three Directors shall constitute a quorum in any meeting, but concurrence of at least **three** directors shall be required before any action taken by the Board shall be binding on the District. A Director is disqualified from voting upon any issue involving his preference permit, or equitable interest in the assets of the District.

SECTION 4. Notice: Notice of Directors' meetings shall be mailed at least five (5) days prior to the date of the meeting excepting meetings may be held at any time upon consent of all directors not in attendance at such meeting.

ARTICLE IV

SECRETARY AND TREASURER, HOW CHOSEN, COMPENSATION AND SALARY OF DIRECTORS

SECTION 1. Secretary and Treasurer: The Secretary and Treasurer shall be chosen and his compensation set by the Board of Directors.

SECTION 2. Compensation of Directors: Members of the Board of Directors shall receive no compensation for their services as Directors but may be reimbursed for their actual expenses while so employed. All bills for such expenses must be itemized and any allowance for car hire shall be set by the Board of Directors.

ARTICLE V

DUTIES OF DIRECTORS

SECTION 1. General Duties: The Board of Directors shall manage the

business of the District, exercise its powers, conduct its affairs and make such rules and regulations not inconsistent with those Bylaws or of the laws of the State of Montana, to properly carry out the purposes of the District.

SECTION 2. Employees to be Bonded: The Board of Directors shall require the Secretary-Treasurer and all other officers, agents and employees charged by them with the responsibility for the custody of any funds or property of the District, to furnish bond of sufficient surety for the faithful performance of their official duties. The premium on such bonds so furnished shall be paid by the District.

SECTION 3. Directors Meetings: The Board of Directors shall meet immediately after the annual election and elect from their number a President and Vice-President. The Directors shall call at least one other meeting of members annually at a time and place chosen by the Board provided that the members of the District be given ample notice thereof.

SECTION 4. Special Meetings: Special meetings of the Board of Directors may be called at any time by the President or by a majority of the Board.

SECTION 5. Auditing: The Board of Directors shall require the Secretary-Treasurer to keep an accurate set of books, (the Department of Natural Resources and Conservation may prescribe uniform books for this purpose), and to have the books of the District audited at the expense of the District immediately following the close of the fiscal year and prior to the annual meeting of the members, such audit to be by a certified public accountant or other competent person approved by the Department of Natural Resources and Conservation.

ARTICLE VI

DUTIES OF OFFICERS

SECTION 1. The Duties of the President: The President shall:

(a) Preside over all meetings of the District and of the Board of Directors.

(b) Sign as President with the Secretary-Treasurer all certificates of membership, notes, deeds and other instruments on behalf of the District.

(c) Call special meetings of the members of the District and of the Board of Directors.

(d) In cooperation with the Secretary-Treasurer direct the affairs of the District, subject to the control of the Board of Directors.

(e) Perform all other acts and duties usually required of the executive and presiding officer.

SECTION 2. Duties of Vice President: The Vice President shall perform all

acts and duties of the President in his absence or inability to act.

SECTION 3. Duties of the Secretary-Treasurer: The Secretary and Treasurer shall:

(a) Keep a complete record of all meetings and conduct all correspondence of the District and of the Board of Directors.

(b) Sign as Secretary and Treasurer with the President all certificates of membership, notes, deeds and other instruments on behalf of the District; sign all checks alone as Secretary and Treasurer.

(c) Serve all notices required by these Bylaws.

(d) Receive and disburse all funds and be the custodian of all property of the District. All disbursements shall be evidenced by a receipted, itemized statement.

(e) Keep a complete record of all business of the District and make a full report of all matters and business pertaining to his office to the Board of Directors at any time requested and to the members at their annual meeting; make all reports requested of the District by the Department of Natural Resources and Conservation.

(f) Permit members to inspect his books during any reasonable business hours.

(g) Perform such other duties as may be required of him by the District, the Board of Directors and these Bylaws.

ARTICLE VII

FINANCES

SECTION 1. Fiscal Year: The fiscal year shall start on the first day of January and end on the thirty-first day of December.

SECTION 2. Annual Statements: Follow the instructions of Section 5 of Article V of these Bylaws.

SECTION 3. Grazing Fees: The amount of grazing fees shall be set by the Board of Directors not later than the first day of March of each year, terms and conditions of payment to be set by the Board. No more than five dollars (\$5.00) per animal unit may be charged for an eight-month grazing period. This amount includes the fee imposed by the Department of Natural Resources and Conservation. No fee shall be set unless approved by the Department and properly authorized by the permittee members of the District at a regularly called annual meeting or at a special meeting.

SECTION 4. Operating Expenses: In no one fiscal year shall the Board of Directors authorize the expenditure of an amount in excess of ten per centum of

the gross amount collected during that year from grazing fees, for the ordinary administrative expenses of conducting the affairs of the District. The ordinary administrative expenses of the District shall include such items as expense for car hire allowance of Directors, salary of the Secretary-Treasurer, stamps, stationery, other office supplies and expense, State fees, and all other minor items not properly chargeable to the lease of or control of range.

SECTION 5. Assessments: An assessment is and shall be separable from and independent of grazing fees. Grazing fees are an annual charge based upon the number of animal units grazed or range utilized during the regular grazing period by a permittee member. An assessment shall be for a particular purpose and only levied with the consent in writing of eighty (80%) per centum of the permittee members of the District.

SECTION 6. Equitable Interest of Members in District Assets: Section 76-16-414, MCA shall govern.

SECTION 7. District as Agent: The District may act under power of attorney as agent for any member or members for the purpose of acquiring range by lease.

ARTICLE VIII

GRAZING PREFERENCES

SECTION 1. How Determined, Owned and Cancelled: Sections 76-16-401, 402, 403, 404, 405, 406, 407, 408, 409, 412, 413, MCA shall govern.

ARTICLE IX

AMENDMENTS

SECTION 1. How Done: These Bylaws may be amended in any regular annual meeting or special meeting called for the purpose by a two-thirds vote of the permittee members present. The only notice of such meeting shall be that required under Article II of these Bylaws; voting to be by written ballot and no such amendment shall be effective until approved by the Department of Natural Resources and Conservation.

ARTICLE X

USE OF RANGE

SECTION 1. By Members: No member shall turn stock upon the range until granted a permit or sublease for the grazing period. The Board shall not issue a

permit or sublease to any member until arrangements satisfactory to the Board have been made covering payments of all grazing fees.

SECTION 2. Penalties: Members owning or in control of livestock found in trespass within the District may be assessed a penalty of not less than One Dollar (\$1.00) per animal unit in trespass for the first offense and not less than Five Dollars (\$5.00) per animal unit in trespass for the second offense.

ARTICLE XI

COMMENSURATE RATING

SECTION 1. All determinations of commensurability, dependent commensurability, or carrying capacity shall be made by the Board of Directors. The Board may cooperate with Federal, State and County departments or agencies in making such determinations. For the purpose of these Bylaws, the carrying capacity of any land shall be the number of animal units such land can reasonably carry during the established grazing period, and the commensurability of any land or farm or ranch unit shall be the number of animal units for which it can normally provide food during other than the established grazing period.

SECTION 2. Commensurate rating will be based on the actual forage production, both cultivated and native, of the base property.

SECTION 3. The dependent commensurability of each member's farm or ranch unit shall be classed as dependent as is necessary to support the animal units for which such farm or ranch unit has "prior use." (The dependent commensurability of any farm or ranch unit will then be numerically equal to either the commensurability or the prior use of such unit, depending upon which is the smaller.)

SECTION 4. A determination shall be made of the average number of animal units which were grazed within the District in connection with each member's farm or ranch unit during the period from 1929 to 1934, and in accordance with the Federal Range Code. Such determination will hereafter be referred to as the "Prior Use" of such farm or ranch unit.

ARTICLE XII

NOTICE TO PERMITTEE MEMBERS, MORTGAGEES OR OWNERS

SECTION 1. If for any reason it should become necessary for the District to discontinue in the whole or in part, the further use of the range by a permittee member through non-compliance with rules, regulations, bylaws or otherwise, the matter will be referred to the real mortgage holder or the land owner of the

permittee who may make compliance within sixty days and retain such permit or sublease with the commensurate land, provided that the said mortgagee or owner files with the Board of Directors of the District a statement indicating the commensurate land upon which he holds the mortgage or of which he is the owner.

ARTICLE XIII

The following section is used under Paragraph 4 of Section 12, Chapter 208 of the Montana Twenty-Sixth Legislative Session.

SECTION 1. Non-Use Permits: Whenever a permittee member, unable to utilize all of his grazing preference in any one year shall, on or before February first of that year, notify the Secretary-Treasurer of the District of his application for a non-use permit and the District is able to utilize this range advantageously, the non-use shall be granted upon payment by said applying permittee of a fee of ten per centum of the normal grazing fee of that year. If the District is unable to utilize this range, they shall permit the applying member to fill the preference with outside stock for that season. If both are unable to utilize the range, the non-use shall be granted upon payment by the applying member of the actual cost of the unused preference to the District for such season. Such non-use shall not be used to exceed three (3) consecutive years, however, in exceptional cases of valuable dependent commensurate properties the Board may grant one or more additional years after having obtained the consent of such action from the Department of Natural Resources and Conservation.

ARTICLE XIV *

RULES, REGULATIONS AND SCHEDULES FOR COMMENSURATE RATING

SECTION 1. Commensurate Rating: Commensurate properties needing range for the proper use will be judged using the following schedules:

Exhibit A—Classification of Lands.

Exhibit B—Yields.

Exhibit C—Food requirements per AUM.

SECTION 2. Winter Grazing: Usual customs will be respected, but any permit for a period of more than eight months must be proportionately reduced to the longer period.

*This Article (Art. XIV) has not been adopted by all Districts.

SECTION 3. Stock Trails and Crossings: Where County roads are not available or are not of sufficient width to permit normal trailing of livestock, the District shall provide either stock trails or crossing privileges, or see that agreements are perfected to permit members' stock to cross, where necessary, in normal movements. Proper charge should be made for the same on a basis of benefits to permittee and damage to member crossed and such charges shall be credited to the permittee of the allotment so crossed.

SECTION 4. Carrying Capacity: As soon as full commensurate surveys are complete and the maximum carrying capacity has been determined, ten year permits may be issued. However, when the carrying capacity becomes reduced, all members shall take proportionate reduction if they range in common, or each permittee shall make proportionate cut within his allotment, where allotments have been made, pro rata to the amount of District range he enjoys to the total of his allotment.

SECTION 5. Non-member Owners of Private Lands: Owners of private range lands within the exterior boundaries of the Grazing District desiring to run stock on their privately owned lands shall be allowed, when proper application has been made to the Secretary-Treasurer of the District, to run the number of stock such lands will carry for the grazing season based on the same schedule of carrying capacity for other lands used in common therewith and such non-member owner shall, by waiving exclusive use of his own lands, be permitted, so long as he abides by all rules, regulations and requirements of permittee members of the district, to run this number of stock with the other permittee member or members in his immediate area, or in case of individual allotments, with that individual permittee in his allotment.

SECTION 6. Bulls: Each livestock operator, whether a member or a non-member, shall as a condition to his right to a permit provide one registered bull, acceptable to the grazing District if the stock are permitted in common, or acceptable to the District and the individual permittee member using the individual allotment, for each 30 head of cows or heifers to be bred.

SECTION 7. Rules and regulations laid down to the District by any State or Governmental Agency relative to the use of their lands must be respected by all members of the district or non-members when such are temporarily permitted within the District. No members shall bid competitively against the District for leases on grazing lands where range is used in common, or against a member within that member's range allotment, nor shall he at any time exceed his permitted number of livestock.

ARTICLE XV

SALE OR LEASE OF COMMENSURATE PROPERTY

SECTION 1. Preference Permits shall be attached to the dependent commensurate property and shall follow such dependent commensurate property through its sale or its lease, so long as such preference be in good standing.

SECTION 2. In event of the sale or lease of a part of any dependent commensurate properties, and the owner and buyer or owner and lessee are unable to agree on a suitable division of the preferences, the Board of Directors of the District shall make such determination.

GRASS CONSERVATION ACT

MONTANA CODE ANNOTATED

TITLE 76

CHAPTER 16

GRAZING DISTRICTS

Part 1 — General Provisions

- Section 76-16-101. Short title.
- 76-16-102. Purpose.
- 76-16-103. Definitions.
- 76-16-104. Role of the department.
- 76-16-105. Powers of the department.
- 76-16-106. Department fees.
- 76-16-107. Range for wild game animals.
- 76-16-108. Nature of rights.
- 76-16-109. Appeal procedure.
- 76-16-110. Administrative procedure act applicable.
- 76-16-111. What constitutes receipt of notice.

Part 2 — Establishment of Districts

- 76-16-201. Procedure to incorporate state district.
- 76-16-202. Notice and hearing on question of incorporation.
- 76-16-203. Certificate of approval.
- 76-16-204. Articles of incorporation.
- 76-16-205. Issuance of certificate of incorporation.
- 76-16-206. Amending articles of incorporation.
- 76-16-207. Filing of map or plat of district.
- 76-16-208. Adoption of bylaws.
- 76-16-209. Alteration of district.
- 76-16-210. Request for dissolution of district.
- 76-16-211. Dissolution of district by board.
- 76-16-212. Distribution of district assets.
- 76-16-213. Final report on dissolution proceedings.

Part 3 — Organization, Administration, and Operation

- 76-16-301. Powers and duties of directors.
- 76-16-302. Membership in district.
- 76-16-303. Voting rights.

- 76-16-304. Effect of transfer of land.
- 76-16-305. Acquisition and disposal of property.
- 76-16-306. Management of grazing lands.
- 76-16-307. Requirement to lease available state lands.
- 76-16-308. Regulation of stock grazing in district.
- 76-16-309. Knowledge of district boundaries responsibility of live-stock owner.
- 76-16-310. Permit required to run livestock in district.
- 76-16-311. Control of trespassing livestock.
- 76-16-312. Impoundment of trespassing livestock.
- 76-16-313. Release of livestock.
- 76-16-314. Recovery of excess charge for damages.
- 76-16-315. Procedure upon inability to locate person responsible for trespassing livestock.
- 76-16-316. Sale of trespassing livestock.
- 76-16-317. Disposition of sale proceeds.
- 76-16-318. Unlawful recovery of trespassing livestock.
- 76-16-319. No liability for official acts.
- 76-16-320. Maintenance of fences.
- 76-16-321. Construction of trespass and fence provisions.
- 76-16-322. Fence-out requirement.
- 76-16-323. District finances.
- 76-16-324. Lawsuits involving district.
- 76-16-325. Compliance with department orders required.

Part 4 – Grazing Permit System

- 76-16-401. Distribution of grazing preferences.
- 76-16-402. Conversion of temporary permittee lands to dependent commensurate property.
- 76-16-403. Procedure if reduction in grazing privileges necessary.
- 76-16-404. Application for grazing preferences.
- 76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property.
- 76-16-406. Transfer of preferences.
- 76-16-407. Processing of application for transfer.
- 76-16-408. Effect of transfer of preference.
- 76-16-409. Transfer of underlying property.
- 76-16-410. Compensation to district for range improvements.
- 76-16-411. Grazing permits to owners of land not controlled by district.
- 76-16-412. Revocation of preferences upon failure to obtain permits,

- pay fees, or obey rules.
- 76-16-413. Effect of revocation.
- 76-16-414. Equalization of district assets.
- 76-16-415. Application to trespass actions.

Part 1

General Provisions

76-16-101. Short title. This chapter may be cited as the "Grass Conservation Act."

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit grazing districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1) and does not include fees.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.

(4) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range and which has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of such districts.

(7) "Grazing preference" is a right to obtain a grazing permit from a state district.

(8) "Permits" are evidence of grazing privileges granted by state districts.

(9) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(10) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(11) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors and also includes all lands owned or controlled by the state district or its members.

History: En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part).

76-16-104. Role of the department. (1) The department of natural resources and conservation shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the department of state lands and boards of county commissioners, and supervise and coordinate the formation and operation of districts which may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the department of state lands and boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317.

76-16-105. Powers of the department. The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring his attendance before the department or the board and subpoena witnesses and pay such expenses as

would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

76-16-106. Department fees. (1) The department may impose fees against the several state grazing districts of the state in an amount not in excess of 15 cents per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this chapter.

(2) These fees shall be held in the earmarked revenue fund to be expended by order and direction of the department for the administration of the department's functions under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish and game in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332.

76-16-108. Nature of rights. (1) Preferences or rights under this chapter

through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the district excepting as herein provided.

(2) Any person who chooses to become a member of any state district is bound by all the provisions of this chapter and is limited to the statutory remedies therein contained, and no court shall have jurisdiction to consider any right claimed under this chapter excepting only by judicial review from the final decision of the commission as herein provided.

History: (1) En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2) En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3).

76-16-109. Appeal procedure. (1) Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered or certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a copy of the notice of appeal by registered or certified mail upon any interested parties who have appeared or their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof had upon the record of any hearing conducted and considered by the state district; however, the board may, at its discretion and for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part).

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

76-16-111. What constitutes receipt of notice. In all cases where notices are given permittees under this chapter by registered or certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8).

Part 2

Establishment of Districts

76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area.

(2) The statement shall set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall then cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in that area.

(2) The department for and on behalf of the board shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. The record taken upon the hearing, together with the report of the department, shall be submitted to the board.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the board may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part).

76-16-204. Articles of incorporation. (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(a) the name of the state district, the last four words of which shall be "cooperative state grazing district;"

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than \$5;

(d) the term for which the state district is incorporated, which may not exceed 40 years;

(e) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

(f) the powers of the state district, which may not be inconsistent with this chapter;

(g) the officers of the state district, their principal duties, and the principal duties of the board of directors;

(h) the purpose for which the state district is incorporated.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the department. The only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this chapter.

History: En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318.

76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the board after a hearing thereon before the department, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-208. Adoption of bylaws. A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

History: En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315.

76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11).

76-16-210. Request for dissolution of district. A state district with the written consent of three-fourths of its permittee members may at any time request the board of natural resources and conservation to dissolve the state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

76-16-211. Dissolution of district by board. (1) If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the board, after a hearing thereon and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b).

76-16-212. Distribution of district assets. (1) When a hearing on the request for dissolution has been held before the department and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to creditors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings shall be made to the department by the directors. Upon

the approval of the report by the department, the board shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part).

Part 3

Organization, Administration, and Operation

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313.

76-16-302. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal.

(2) If an agent becomes a member, his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal.

(3) All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-303. Voting rights. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one vote. Voting by proxy may not be permitted.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part).

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and

interest involved shall be determined by the directors of the state district with the approval of the department.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2).

76-16-305. Acquisition and disposal of property. A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise;

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13).

76-16-307. Requirement to lease available state lands. State land situ-

ated within the boundaries of a grazing district created under this chapter, not otherwise disposed of by the department of state lands, must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by that department. However, the officers of the grazing district may appear or submit evidence in writing before the department of state lands and show reason and cause for a change in the rental. If there is cause, the department of state lands may reappraise the land in question. The department of natural resources and conservation shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316.

76-16-308. Regulation of stock grazing in district. A state district may:

- (1) specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district;
- (2) regulate the driving of stock over, across, into, or through the range and collect fees therefor;
- (3) impose sanitary provisions, regulations, and practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12).

76-16-309. Knowledge of district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part).

76-16-310. Permit required to run livestock in district. (1) No owner or person in control of livestock shall permit the same to run at large or under herd within the exterior boundaries of any state district unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district.

(2) The owner or person in control of such livestock running at large or under herd within a state district without a permit from the district or in excess of such permit shall be liable for all damages sustained thereby by any member, permittee, or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less

than \$10 or more than \$500 and, in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto.

(3) This provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1).

76-16-311. Control of trespassing livestock. (1) The state district or its duly authorized agent controlling the land upon which such wrongful entry is made by trespassing livestock may take into its possession such livestock and shall reasonably care for same while in its possession and may retain possession of said livestock and have a lien and claim thereon as security for payment of such damages and reasonable charges for the care of said livestock while in its possession.

(2) The state district taking up such livestock shall, within 72 hours after taking possession thereof, notify said owner, owners, or person in charge thereof by a notice in writing describing said livestock by number of animals and brands thereon, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the same thereafter, such charges not to exceed 50 cents per animal unit per day, and describing by general description the location of the premises upon which said livestock is held and requiring such owner or owners, within 10 days after receiving said notice, to take said livestock away after making full payment of all damages and costs of said livestock.

(3) In case the parties do not agree as to the amount of damages, the state district taking up such livestock may at the expense of the owner retain a sufficient amount of such livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a good and sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by said state district in a civil action to foreclose its lien, have returned to him all livestock held as aforesaid, and said state district shall be liable to such owner for any loss or injury to said livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking up livestock shall fail to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the former shall bear the expense of keeping and feeding same while in its possession. Such notice may be given by personal service on the said owner, owners, or person in charge thereof, by leaving said notice at his usual place of residence

with some member of his family over the age of 14 years, or by sending said notice by prepaid registered or certified mail, addressed to his last known place of residence. Said service by registered or certified mail shall be deemed complete upon the deposit of said notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2),(3).

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. The state district taking up such livestock (if, after due diligence to discover the owner or possessor of such livestock, such owner or possessor cannot be found or the ownership of such livestock discovered) or the party taking up such livestock (if said owner or claimant shall refuse to pay the amount of damages or charges or furnish bonds therefor, as herein provided)

shall, within 10 days from the time that said livestock was taken up, deliver to the sheriff or a constable of the county in which the livestock was taken up a statement containing the information required to be given in the notice, hereinbefore set out, and in addition thereto, he shall mail, by prepaid registered or certified mail, a copy of said statement addressed to the nearest state livestock inspector.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955, R.C.M. 1947, 46-2326(part).

76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff or constable shall proceed to advertise and sell at public auction the livestock so taken up.

(2) Such livestock shall be sold on 5 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three public places in such county, one of which shall be within the district. Such sheriff may require from the state district a good and sufficient bond, conditioned that the state district has used reasonable diligence to discover the owner of such stock and to notify him in the premises and that all requirements of law on the part of the state district to be performed in the premises have been performed and indemnifying the sheriff against all liability for the sale of said livestock except as to his own failure to perform the things required of him by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955, R.C.M. 1947, 46-2326(part).

76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale shall be applied by the sheriff, after first deducting his costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up such livestock, and the remainder, if any, may be paid over to the owner of such livestock, if known, and if the owner is not known, then such remainder shall be deposited with the county treasurer, who shall keep the same in a public fund to be designated state grazing district fund (giving the name of the district). A separate fund, styled as above, shall be kept by the county treasurer for each of said districts within his county. The county treasurer shall make a record of the number and type of animals sold and the brands on same, if any, the amount received for same, and the amount of deductions. The record shall be open to public inspection.

(2) Any person making claim of ownership of such livestock to the board of county commissioners at any time within 1 year from date of sale and submitting proof of ownership to such board with such claim to the satisfaction of such board shall be entitled to receive such excess received from the sale of such livestock.

(3) Any money received from the sale of any such livestock which shall not be so claimed within 1 year after such sale shall be transferred to the general fund of the county at the expiration of said period.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955, R.C.M. 1947, 46-2326(7).

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state grazing district or an agent thereof any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding \$200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955, R.C.M. 1947, 46-2326(10).

76-16-319. No liability for official acts. No officer, board, or employee of such officer or board or employee of any county or of any state district shall be liable for any act performed in good faith in discharging official duties under this chapter. All such acts shall be presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955, R.C.M. 1947, 46-2326(8).

76-16-320. Maintenance of fences. (1) Regarding fences within the external boundaries of state districts, the cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of such state district shall be borne by such member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of such state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by such cost of construction and maintenance of fence, the state district's proportionate share of such costs and maintenance shall be financed only by assessments levied by the state district against the permittee members of the district upon consent thereto by 55% of such permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955, R.C.M. 1947, 46-2326(11),(12).

76-16-321. Construction of trespass and fence provisions. (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other

legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec.46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district shall be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101(1). The state district or its members shall not be liable for damages unless such farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-323. District finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6),(9),(10).

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with department orders required. (1) If a state district or the directors of a state district fail to comply with an order of the

department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed by the board from office, and thereupon the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district shall be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part).

Part 4

Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences shall be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property as heretofore defined may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range for any 3 years or any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, preferring those that have used the range 5 years immediately preceding the organization of such districts.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When such temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by such permit-

tee within or near the district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by such permittee may be considered dependent commensurate property and, upon application, the district may accordingly grant such permittee membership and preference in the district providing an application had been made for temporary rights for each of the 5 years.

(2) However, such temporary permits shall at all times be merely privileges granted from year to year, and their possession shall in no event establish a preference right unless such preference right be expressly granted by the district and in the manner herein provided.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-403. Procedure if reduction in grazing privileges necessary. If reductions in grazing privileges become necessary, operators with temporary permits will be reduced first on a proportionate basis. When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part).

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state grazing district based on dependent commensurate property or commensurate property must make application within 1 year after said district shall have been organized to qualify for said preference; provided, however, all permittees shall be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part).

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws

of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners and any encumbrances of the dependent commensurate or commensurate property from which the transfer is to be made, and a transfer is not effective until approved by the department.

(3) All expenses involved under the application shall be borne by the applicant. History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least 2 full weeks prior to the hearing in three public places within the district.

(2) The date of hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the appli-

cation and any objections thereto.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2).

76-16-408. Effect of transfer of preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3).

76-16-409. Transfer of underlying property. (1) When the land to which a preference is attached changes its control or ownership, the preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-410. Compensation to district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

History: En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323.

76-16-411. Grazing permits to owners of land not controlled by district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by said district and not surrounded by a legal fence, any person owning or controlling such lands shall have the right to obtain a grazing permit from the state district, the size of which shall be determined by the carrying capacity of such land, full consideration being given for location of necessary stock water. The use of such permit shall be subject to all regulations

by the state district.

(2) If the person owning or controlling such land declines to secure such permit or fails to lease such land to the state district at a fair lease rental and fails to fence such land at his own expense, he shall not be entitled to recover damages for trespass by stock grazing under permit, but the state district shall not issue a permit to use the carrying capacity of such land.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part).

76-16-412. Revocation of preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by registered or certified mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the district within 60 days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

76-16-413. Effect of revocation. (1) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7).

76-16-414. Equalization of district assets. (1) Whenever a state district shall possess reserves, the values of which are greater than its liabilities, and the state district shall determine that a part of such reserves is in excess of its reason-

able needs to operate the district, such state district may refund to the permittee members their proportionate share of such reserves as determined at the last annual accounting.

(2) Whenever a state district shall possess reserves and physical assets, the values of which are greater than its liabilities, and a permittee member shall lose his grazing preference, he shall be entitled to receive his proportionate share of the value of such excess from the state district, as determined by the annual accounting of the state district. The state district may set off the amount of any claim it may have against such former member.

(3) Whenever a new member shall receive a grazing preference, he shall, as a condition of receiving such preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund which accrues to him by virtue of such membership. Such value shall be determined at the time of receiving such preference and upon the basis of the determination of value of such physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324.

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

STATE AND FEDERAL AGREEMENTS

MEMORANDUM OF UNDERSTANDING Between DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION STATE OF MONTANA and BUREAU OF LAND MANAGEMENT U.S. DEPARTMENT OF THE INTERIOR MONTANA STATE OFFICE

I. PURPOSE

This Memorandum of Understanding is between the Bureau of Land Management, hereinafter called the Bureau, and the Department of Natural Resources and Conservation, hereinafter called the Department.

The purpose of this agreement is to create an atmosphere of cooperation and mutual trust between the Bureau and the Department. A working agreement founded on these principles will allow the Bureau, the Department and the State Districts to achieve the objectives spelled out in the Federal Land Policy and Management Act, Public Rangelands Improvement Act, the Taylor Grazing Act and the Montana Grass Conservation Act. As a result, benefits will be brought to all the lands within the Districts.

II. POLICY

The Department and State Districts are interested in the multiple use of lands, as is the Bureau. This Memorandum of Understanding reaffirms that interest, but also recognizes that nonlivestock uses depend on the cooperation of many. Where such needed cooperation is not present, the parties to this agreement will work to resolve any conflict which may occur with other land users.

To coordinate the use of public lands and the State District-controlled lands within the boundaries of Cooperative State Grazing Districts, the Bureau and the

Department set forth the following policies, objectives and principles:

Definitions

A. Cooperative State Grazing District (hereinafter called State District)—a district organized and operating under the provisions of the Montana Grass Conservation Act of 1939 as amended.

B. Bureau District—an administrative subdivision of the Bureau of Land Management.

C. All definitions included in 43 CFR 4100.0-5 are embraced in this document.

D. Public lands—those lands owned by the United States under the jurisdiction of the Bureau.

E. State District Lands—those private, state, county or other nonfederal lands owned, leased or controlled by a State District.

F. Multiple Use—the doctrine that a given piece of land may have many uses to people. (FLPMA—PL94-579—Sec. 103(c))

III. AUTHORITY

The Bureau under the National Environmental Policy Act, the Federal Land Policy and Management Act, Public Rangeland Improvement Act, the Taylor Grazing Act, 43 U.S.C.A., Section 315 and the Department under the Montana Grass Conservation Act, Title 76, Chapter 16, Montana Code Annotated, have similar purposes in providing for (but not limited to) the conservation, protection, restoration and proper use of grass, forage and range resources. The intermingled, diverse ownership land pattern of many Montana areas presented a situation which led to the enactment of the Montana Grass Conservation Act. This Act, which sets up State Grazing Districts, was designed to supplement and implement the Taylor Grazing Act. It provides a useful tool for range management, inasmuch as it brings all lands within the State Districts' boundaries under coordinated administration.

IV. RESPONSIBILITY

A. The Bureau

Regulations implementing the National Environmental Policy Act, the Federal Land Policy and Management Act, the Public Rangeland Improvement Act, the Taylor Grazing Act and other applicable Federal Law regulates the management and use of the public lands. The Secretary of the Interior sets policies and establishes rules having the force and effect of law which control and define the duties and authorities of Bureau officials. The Bureau may enter into cooperative agreements that are consistent with Fed-

eral laws and regulations. The Bureau must consider environmental implications of all actions planned or taken, as required by applicable law. The following major principles result:

1. The Bureau will manage the public lands in accordance with the Congressional directives provided in the National Environmental Policy Act, Federal Land Management and Policy Act, Public Rangeland Improvement Act and the Taylor Grazing Act, as well as other public land laws. In furtherance of these directives, the Bureau will manage the grazing use of the public lands based on all present and potential uses and values, giving full consideration to the influence that grazing management has on those uses and values.
2. Only a livestock operator, who controls the base properties to which Federal grazing preferences are attached, may be a preference applicant. It is agreed that no State District shall make application for a grazing permit or lease, except where the State District controls the base properties described above.
3. Federal grazing preferences and the use and enjoyment thereof may be established, revoked, reduced or otherwise modified under the provisions of the Federal Land Policy and Management Act, Public Rangeland Improvement Act, the Taylor Grazing Act and the grazing regulations.

B. The Department

The Department, with the approval of the Board of Natural Resources and Conservation, supervises and coordinates the formation and operation of State Districts. These State Districts provide a means of cooperation with the Secretary of Interior through the Bureau and other agencies. State Districts facilitate grazing administration where the ownership is diverse and intermingled. They promote stabilization of the livestock industry and the improved management of dependent base ranch properties.

C. Coordinated Administration

In order that the highest possible degree of coordination can exist, the BLM District Manager will furnish a representative to meet with the State District Boards at their regular meetings. This representative from BLM will counsel and advise the boards on all matters concerning the administration of the lands involved in this agreement, such as considering applications, making allocations, trespass, range improvements, management plans, fences, repairs to existing improvements, etc.

V. MANAGEMENT CONSIDERATIONS

A. Cooperative Agreements

1. A cooperative agreement may be entered into between any State District and a Bureau District. The cooperative agreement form which implements this memorandum of understanding provides the opportunity to identify and cope with unique operational problems peculiar to individual State Districts and Bureau Districts. Attached Exhibit A contains mandatory sections for each such cooperative agreement.
2. Before entering into a cooperative agreement, State Districts will submit a proposal to the Department for review.
3. Each agreement shall be effective upon approval by the State District and the Bureau District. Provisions for review, updating and cancellation shall be the same as for this Memorandum of Understanding.
4. Once consummated, a new cooperative agreement, together with this memorandum of understanding, supersedes any existing cooperative agreement between the Bureau and an individual State District.

B. Grazing Capacities and Levels of Uses

1. The State District will determine grazing capacities on State District Lands.
2. Where the Bureau establishes that public lands possess sufficient public values and the public lands are intermingled with and grazed at the same time as State District lands, the Bureau will make the final determination of the level and timing of grazing use in all pastures which contain public land, in absence of coordinated ranch plans, in cooperation with the permittee/lessee and the State District.

C. Management Plans

1. Allotment management plans are provided for in the Federal Land Policy and Management Act, Public Rangeland Improvement Act and Taylor Grazing Act. Allotment plans are cooperatively developed between the rancher(s) involved, the State Districts and the Bureau District Manager. Bureau District planning priorities and schedules will be reviewed for each State District Board at the Board's request. After the details are worked out with the rancher(s), each AMP will be presented to the State District for review. State District approval will be required where State District lands are involved. Where permittee/lessee, State District and BLM are unable to agree on an AMP and

intensive grazing management has been determined necessary, the Bureau may, in order to comply with the applicable law, incorporate a grazing treatment into a permit/lease.

2. A State District may develop allotment management plans on its own initiative using technical information made available by the Bureau and others. Bureau approval of an AMP is required where public lands are involved.

D. Environmental Impact Statement

When the Bureau undertakes to write Environmental Impact Statements on any of the lands within State Grazing Districts, the Bureau shall notify the Department and the Grazing District(s) involved and shall call for their recommendations and review.

E. Grazing Trespass Control

1. Prompt and vigorous handling of trespass is essential. Where public and nonpublic lands are simultaneously involved in a grazing trespass, the State District and the Bureau District, in accordance with their respective responsibilities, shall take appropriate action to halt such violations and to assess damages and penalties and deposit proceeds under applicable State and Federal law. On the public lands, the procedures for handling trespass are covered in Title 43 of the Code of Federal Regulations.

2. It is highly desirable for the State Districts to take the lead in coping with grazing trespass actions due to the greater flexibility of the procedures prescribed by the Montana Grass Conservation Act. The State Districts are encouraged to assume this responsibility and define it clearly in the cooperative agreement. In the absence of the State District taking the lead, the Bureau will take necessary action.

3. In any event, if public lands are involved, the Bureau must collect its share of penalty payments as prescribed by Federal regulations. The Bureau District Manager will bill the trespasser through the State District, unless the BLM and District agree otherwise.

F. Communication

The BLM and Department agree to keep each other informed at least quarterly of all ongoing programs and activities. Each agency also agrees, in the event special actions require immediate attention, they will notify the other party before such action is taken.

VI. ADMINISTRATIVE CONSIDERATIONS

A. Reviewing and Updating

The parties to this memorandum of understanding will meet at least once a year to review progress and/or problems and will review and update this memorandum as changes in policy and other needs require. Changes shall not affect outstanding licenses, permits or leases.

B. Effective Date—Violations—Termination

This Memorandum of Understanding shall be effective when signed by the parties and shall continue in effect unless terminated by mutual agreement of the parties, or terminated as provided herein. Should either party violate any of the terms of this Memorandum of Understanding, the other party may give the violating party written notice of such violation, said notice to specify the violation. Should said violation not be corrected or discontinued within a reasonable time after giving such notice, the other party may cancel this Memorandum of Understanding upon thirty (30) days written notice to the violating party. Cancellation shall not affect outstanding licenses, permits or leases. Further, this memorandum may be terminated by either party after thirty (30) days notice.

Bureau of Land Management

By _____ Date _____
State Director—Montana

Montana Department of Natural Resources and Conservation

By _____ Date _____
Director

COOPERATIVE AGREEMENT

between
__ COOPERATIVE STATE GRAZING DISTRICT
and
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
and
BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
_____ DISTRICT

I. PURPOSE

This Cooperative Agreement is entered into between the _____ District of the Bureau of Land Management, hereinafter called the Bureau, and the _____ Cooperative State Grazing District, hereinafter called the State District.

The provisions of the Memorandum of Understanding between the Montana State Director of the Bureau of Land Management and the Department of Natural Resources and Conservation, hereinafter called the Department, dated, are hereby incorporated into this agreement.

Where appropriate delegations of authority have been made from the Bureau District Manager to a Bureau Area Manager to take those actions listed as Bureau District Manager, the Bureau Area Manager may take those actions.

II. POLICY

Subject to the policy stated in the Memorandum of Understanding dated _____ between the Department of Natural Resources and Conservation and the Bureau of Land Management.

III. AUTHORITY

Subject to the authority stated in the Memorandum of Understanding dated

_____ between the Department of Natural Resources and Conservation and the Bureau of Land Management.

IV. RESPONSIBILITY

Subject to the responsibility stated in the Memorandum of Understanding dated _____ between the Department of Natural Resources and Conservation and the Bureau of Land Management.

V. MANAGEMENT CONSIDERATIONS

The parties hereby do agree to the following rules and procedures:

A. Environmental Impact Statements

When Grazing or other Environmental Impact Statements involve any of the lands within a State Grazing District, the District Manager will notify the Department and Grazing District(s) involved and will call for their recommendations, usually through public meetings with the District membership. Grazing capacities and levels of use or forage allocations will be determined and made for all allotments based upon periodic field inventories and monitoring in the BLM land use planning process after public review with the public at large.

B. Allotment Management Plans

1. The Bureau Area Manager/District Manager will periodically review with the State District the priority lists for new plans as well as progress on existing plans.
2. In accordance with the Federal Land Policy and Management Act and Public Rangeland Improvement Act, AMPs will be prepared in careful and considered consultation, cooperation and coordination with lessees, permittees and landowners involved, the Bureau's District Grazing Boards, established pursuant to Section 403 of the Federal Land Policy and Management Act (43 USC 1753), and any State or States having lands within the area to be covered by such allotment management plan. After the details are worked out the AMP will be presented to the District for review. State District approval will be requested when State District controlled lands, as defined in the Memorandum of Understanding, are involved. Where permittee/lessee, State District and BLM are unable to agree on an AMP and intensive grazing management has been determined necessary, the Bureau may, in order to comply with the applicable law, incorporate a grazing treatment into a permit/lease.

C. Authorizing Grazing Use

1. Term Permits: The Bureau will offer grazing permits for a term not to exceed 10 years to users of public lands in the State District. These permits will be computer printed and distributed to the individual operators by the Bureau District Manager, with signed copies sent to the State District.

Grazing permits will authorize grazing use and will specify the grazing capacity available and the kind and class and numbers of domestic or indigenous livestock use in the allotments, the period of time which the lands may be used, and may contain other specific terms and conditions. Grazing systems may be incorporated into permits or leases by the Bureau.

All grazing permits or adjustments in grazing permits will be determined for all allotments based on periodic field inventories and forage allocations in the Bureau Land Use Planning Process after public review. Adjustments may also be needed to conform to existing law or regulation.

2. Grazing Preference Statement: The Grazing Preference Statement will be computer printed by the Bureau's Range Management Automated System. This Preference Statement will state the certified preference of the grazing permittee on public lands. It will show the basic grazing schedule including the allotment name or number, kind and class of livestock and periods (seasons) of use. In case of an allotment management plan it will so indicate.

The Bureau will forward the Grazing Preference Statement and an Application Form to the Grazing District Secretary for each public land operator in the State District. The District Secretary will send each member his preference statement and application by _____ (date) each year.

If the individual rancher intends to follow the basic grazing schedule as set out on his Grazing Preference Statement, no action is required.

3. Change in Grazing Schedule: If the operator wants to change his grazing schedule, he will make application to the Bureau, by _____ (date), and to the District Secretary, using the Grazing Application Form, or a format, which indicates the following:

Grazing Area or Allotment	Number, Kind and Class of livestock	Grazing Season From:	Active or To:	Nonuse
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This application will be considered by the State District and the Bureau prior to State District protest meeting. If a change is authorized, the Bureau will make the change from the basic schedule and the billing will be issued to the State District for payment. (If the requested change is made after ir retrievable billing action has been taken, a \$10 service charge will be required. The request for a change will be first considered by the State District and then by the Bureau's area manager.)

Any operator served with an adverse notice by the State District shall have the right of appeal to the Montana Department of Natural Resources and Conservation as set out in the Montana Grass Conservation Act.

If the change in grazing use as requested is considered unacceptable by the Bureau's District Manager, he will issue a proposed decision to the rancher by certified mail providing the right of protest to the District Manager as set out in the Grazing Regulations. If no protest is filed within 15 days, the proposed decision becomes the final decision. If a protest is filed, it will be considered in the issuance of the final decisions. In either case, the final decision may be appealed to an Administrative Law Judge as provided for in Administrative Remedies (43 CFR 4160).

4. Grazing Fees and Billing: Public land grazing fees are established annually. Immediately upon receipt of notice of the fee for the forthcoming grazing season, the Bureau Area Manager will notify the State District. Payment will be in accordance with the billing notices.

After the State District members' applications have been approved by the Bureau Area Manager, the aggregate of individual grazing billings will be transmitted in March to the State District for payment, complete with printout summary for State District.

The State District will prepare the overall ranch unit permit conforming with Bureau billing and State District preference. Where State District forms are used, copies will be furnished the Bureau District Manager simultaneously upon issuance to the ranchers.

Where grazing is authorized on the basis of an allotment management plan either of two optional billing procedures may be used as specified (in 43 CFR 4130.51(3)). The option used will be mutually agreed upon by the Bureau, the State District and the operator. Billing notices will state that grazing is authorized in conformance with the plan.

5. Transfers: Documentation of transfer of ownership or control of base

properties and other private lands grazed in conjunction with the public lands will be furnished to the Bureau by the applicant. Each application transfer requires a \$10 service charge, which is nonrefundable.

Documentation of ownership or control of State District-controlled lands upon which the State District issues a permit to graze in conjunction with public lands will be furnished to the Bureau District Manager by the State District upon request.

6. Exchange of Use Agreements: If a State District member wishes to offer private state or county lands for additional grazing capacity, the "exchange" will be recognized only through a formal agreement between the Bureau District Manager and the member on the standard Bureau form. In the event State District lands are involved, State District approval will be required.

The State District will be consulted on Exchange of Use applications and will be furnished copies of the consummated agreement on request.

D. Trespass

In the event a trespass is discovered or brought to the attention of either party, the other party will be immediately notified. If only State District-controlled lands are involved, the State District will take action. If Public Lands are involved, joint action will be taken. The notice of trespass will be served upon the individual in trespass, with a copy to the State District.

Either party may take immediate action after notification of the other party.

The bill for trespass damages will be issued to the individual through the State District.

Trespass and trespass charges will be handled in accordance with 43 CFR 4150, Unauthorized Grazing Use.

E. Other Special Provisions:

(Enter here exceptions or additions as may suit each district's special circumstances.)

VI. ADMINISTRATIVE CONSIDERATIONS

A. Review and Updating

1. The parties to this cooperative agreement will meet at least once a year to review progress and/or problems and will review and update this agreement as changes in policy and other needs require. Changes

shall not affect outstanding licenses, permits or leases.

2. This Cooperative Agreement shall be effective when signed by the parties and shall continue in effect unless sooner cancelled by mutual agreement of the parties. Further, should either party violate any of the terms of this Cooperative Agreement the other party may give the violating party written notice of such violations, said notice to specify the violation. Should said violation not be corrected or discontinued within thirty (30) days after giving such written notice, the other party may cancel this Cooperative Agreement upon thirty (30) days written notice to the violating party. Cancellation shall not affect outstanding permits or leases.

Chairman, Cooperative State Grazing District

Date

District Manager
Bureau of Land Management

Date

Director
Dept. of Natural Resources and Conservation

Date

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